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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,752

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Murray Edward Bruce Leighton

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DAY PITNEY LLP

ACCOUNT: ILLINOIS TOOL WORKS INC.

7 TIMES SQUARE

NEW YORK, NY 10036-7311

EXAMINER

BATTISTI, DEREK J

ART UNIT

PAPER NUMBER

3782

MAIL DATE

DELIVERY MODE

01/30/2012

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/593,752

Applicant(s)LEIGHTON, MURRAY EDWARD
BRUCE**Examiner**

DEREK BATTISTI

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 21-51 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 21-51 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 21, 28 and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Ausnit (US 4,691,373).

In regards to claim 21, Ausnit discloses a reclosable fastener comprising first and second strips (72, 73 – Fig. 9) of fastener material which are engageable with and disengageable from each other, each strip comprising an elongate body portion which is shaped for releasable engagement with the body portion of the other strip and first (Fig. 11 - 79, 80) and second (69, 70) longitudinal flanges wherein a plane of separation is located adjacent to the elongate body portions, the first flanges being configured for attachment to film (90) of a bag, the first flanges extending away from the plane of separation of the strips and the second flanges extending in the same direction substantially parallel to the plane of separation. (See Fig. 11 and col. 9 ll. 39-67).

In regards to claim 28, Ausnit discloses a reclosable fastener in which each fastener strips has a third longitudinal flange (77, 81) which extends in a plane substantially parallel to the plane of separation in a direction opposite to that in which the respective second flange extends. (See Figs. 9 and 11).

In regards to 31, Ausnit discloses a reclosable fastener in which the second and third flanges of each strip are substantially coplanar with each other. (See Figs. 9 and 11).

In regards to claim 32, Ausnit discloses a reclosable fastener in which the first flanges extend in planes substantially perpendicular to the plane of separation. (See Fig. 11).

In regards to claim 33, Ausnit discloses a reclosable fastener comprising first and second strips (72, 73) of fastener material which are engageable with and disengageable from each other, each strip comprising an elongate body portion which is shaped for releasable engagement with the body portion of the other strip, each strip having at least first (79, 80), second (69, 70) and third (77, 81) longitudinal flanges, wherein a plane of separation is located adjacent to the body portions, the first flanges being configured for attachment to film of a bag, the first flanges extending away from the plane of separation of the strips. (See Figs. 9 and 11 and col. 9 ll. 39-67).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit (US 4,691,373) as applied to claim 21 in further view of Kettner (US 5,749,658).

In regards to 22 and 23, Ausnit discloses the claimed invention except the first flanges being narrower than the second flanges. Kettner, however, which is drawn to a reclosable bag, teaches first flanges (24, 34) configured for attachment to a film of a bag being narrower than second flanges (25, 35) by at least one-half the width, which are used to separate the reclosable fastener. (See Kettner, Figs. 1-4). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use first flanges configured for attachment to a film of a bag being narrower than second flanges by at least one-half the width, as disclosed by Kettner, on the bag of Ausnit in order to facilitate manufacture of the bag. (See Kettner, col. 5 ll. 16-34).

5. Claims 24-26, 29-30 and 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit (US 4,691,373) as applied to claim 21.

In regards to claims 24-26, 29-30 and 34-38, Ausnit discloses the claimed invention except the widths of the first, second and third flanges. It would have been obvious to one having ordinary skill in the art at the time the invention was made to the width of the flanges within the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

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6. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit (US 4,691,373) in view of Ausnit (US 3,959,856).

In regards to claim 27, Ausnit discloses the claimed invention except a slider. However, Ausnit '856 teaches a reclosable fastener (5) having a flange (23) with a slider (27). It would have been obvious to one of ordinary skill in the art to have fitted a slider on the fastener of Ausnit, as taught by Ausnit '856, in order to assist in closing the fastener permitting a water-tight closure the full length of the zipper.

7. Claims 39-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit (US 4,691,373) in view of Machacek et al. (US 2003/0231808).

In regards to claims 39-46, Ausnit discloses the claimed invention except a spout joined to the second flanges that is removed. However, Machacek et al. teaches a spout (40) joined to a flange (28,30) of a reclosable fastener that is removed outside of the bag. It would have been obvious to one of ordinary skill to have included a spout in the reclosable fastener of Ausnit, as taught by Machacek et al., in order to help direct product outside of the bag interior by removing the spout.

8. Claims 47-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ausnit (US 4,691,373) in view Schneider et al. (US 6,609,828).

In regards to claims 47-51, Ausnit discloses the claimed invention except a rolled web of sheet material having a plurality of spaced openings. However, Schneider et al. teaches a rolled web of sheet material (30) having a plurality of spaced openings (20). It would have been obvious to one of ordinary skill in the

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art to have the fastener of Ausnit secured to a web of sheet material having a plurality of spaced openings, as taught by Schneider et al., in order to form a container with an access opening that can be opened and resealed when accessing the contents of the container.

Response to Arguments

9. Applicant's arguments with respect to claim 21-51 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEREK BATTISTI whose telephone number is (571)270-5709. The examiner can normally be reached on Mon-Thur, 7:30 am - 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DEREK BATTISTI/
Examiner, Art Unit 3782

/JES F. PASCUA/
Primary Examiner, Art Unit 3782